

**TOWN OF ACTON**

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**ZONING ENFORCEMENT OFFICER
Staff Report****Board of Appeals**

TO: Chairperson and Members
Board of Appeals

DATE: January 3, 2011

FROM: Scott A. Mutch
Zoning Enforcement Officer & Assistant Town Planner

SUBJECT: File #11-01: 30 Minuteman Road – Variance Seeking to Retain Existing Non-Compliant Shed Structure

The applicants, George & Patricia Haras, are requesting a variance in order to retain an existing shed and supporting re-enforced concrete base which encroaches into the minimum required front yard setback on both the Minuteman Road and John Swift Road sides of their residential property. The variance requested is seeking relief from the minimum 30'-0" front yard setbacks required under the terms set forth within the Town of Acton's Zoning Bylaw, Section 5 – Table of Standard Dimensional Regulations.

ZONING / SITE DATA**Legal**

Description: Middlesex South District Registry of Deeds: Book: 16851; Page: 194-195; Plan 9995; Page: 256 (257 of 1962)
Town of Acton Atlas: Map F-3A; Parcel 8.

Zoning: R-2 (Residence 2)

Bylaw Requirements	Required	Existing	Proposed
Min. Lot Area (ft ²)	20,000	20,152	No Change
Min. Lot Frontage (ft) – Minuteman Rd.	150'-0"	129.69'	No Change
Min. Lot Frontage (ft) – John Swift Rd.	150'-0"	114.69'	No Change
Min. Front Yard – Minuteman Rd.*	30'-0"	31'-0" **	Unknown
Min. Front Yard – John Swift Rd. *	30'-0"	45'-0" **	Unknown
Min. Side Yard (ft) – East Side	10'-0"	24'-0"	No Change
Min. Rear Yard (ft) – North Side	10'-0"	76'-0"	No Change
Maximum Building Height (ft)	36'-0"	Unknown	Unknown

- * Front Yards – Front yards shall be the distance measured in a straight line between the LOT FRONTAGE and the nearest point of any BUILDING or STRUCTURE, excluding roof overhangs. Roof overhangs shall not extend further than two feet into the minimum required front yard. **A LOT having FRONTAGE on two or more STREETS shall have two or more front yards, each of which shall comply with**

the requirements of the front yard provisions. In no case shall any BUILDING or STRUCTURE be located closer to the sideline of a STREET than the minimum required front yard.

** Setback is measured from the property line to the closest point of the existing dwelling structure.

- 10.5 **Variance** - Variances from the specific requirements of this Bylaw may be authorized by the Board of Appeals.
- 10.5.5 **Mandatory Findings** – Before granting any variance from the requirements of this Bylaw, the Board of Appeals must specifically find:
 - 10.5.5.1 That owing to circumstances relating to the soil conditions, shape, or topography of the LOT or STRUCTURES in question and especially affecting such LOT or STRUCTURES but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner; and
 - 10.5.5.2 That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw. In deciding whether the requested variance nullifies or substantially derogates from the intent or purpose of this Bylaw, the Board of Appeals shall consider whether the granting of such variance is consistent with the Master Plan.

STAFF ANALYSIS

The subject property is located within an R-2 (Residence 2) Zoning District. The subject property is a corner lot which is located at the intersection of John Swift Road and Minuteman Road. As per the Town of Acton's Zoning Bylaw, Section 5.2.4 states that "A LOT having FRONTAGE on two or more STREETS shall have two or more front yards, each of which shall comply with the requirements of the front yard provisions". Therefore, both the John Swift Road and Minuteman Road sides of the property shall have minimum 30'-0" front yard setbacks where no structures are permitted.

The non-compliance issue was discovered when it was brought to the attention of this office and an investigation was undertaken. An on-site inspection/meeting was conducted on October 22, 2010, with both of the Applicants, the ZEO and another member of the Planning Department being present at that meeting. The purpose of the meeting was 1) to explain why, and 2) determine the extent to which the shed was in violation of the Zoning Bylaw.

As identified within the applicant's letter submitted as part of the variance application package, the shed structure is approximately 8'-0" in width by 12'-6" in depth. The concrete base which supports the shed is approximately 12'-0" in width by 15'-0" in depth.

With the applicant's being present and their permission to do so, Staff very roughly identified the location of the property lines on both the John Swift Road and Minuteman Road sides of the property. The property lines were identified as being approximately 9'-0" from the Minuteman Road edge of pavement and approximately 6'-0" from the John Swift Road edge of pavement. Measurements were then taken from the "unofficial" property lines to the shed structure. Based upon the "unofficial" location of the

property lines, it was determined that with regards to the John Swift Road side of the property, the shed structure was within a foot (1'-0") of being compliant. However, with regards to the Minuteman Road side of the property, the entire shed structure – including the entire concrete base – was located within the 30'-0" minimum front yard setback, and therefore completely non-compliant.

It should be noted, and the applicant should be commended for attempting to do their due diligence prior to purchasing and installing the shed structure. Unfortunately, there was a misunderstanding along the way which has resulted in the subject variance request. Although the applicant's letter submitted as part of the application package explains the process they went through prior to purchasing and installing the shed structure, Section 10.5.5 of the Town of Acton's Zoning Bylaw sets forth very specific requirements, criteria and mandatory findings which must be met and satisfied in order for the Board of Appeals to grant such a requested variance. Based upon a review of the application package submitted and all of the information provided to date, it is unclear, and does not appear that the mandatory findings have been met or satisfied. There does not seem to be sufficient evidence in order to find that such a variance request seeking relief from the 30'-0" front yard setback requirements is warranted or justified.

Should the Board of Appeals wish to consider granting the requested variance, it would be beneficial before proceeding any further, to request that the applicant have a Certified As-Built Plot Plan completed by a Massachusetts Registered Land Surveyor of their property which shows the exact location of the subject shed (and accompanying concrete base) and the setbacks from both Minuteman Road and John Swift Road. The dimensions used throughout the enforcement process to date with regards to the exact location of the shed structure are not exact or precise by any means. The Certified As-Built Plot Plan would provide very clear, concise and accurate dimensions.

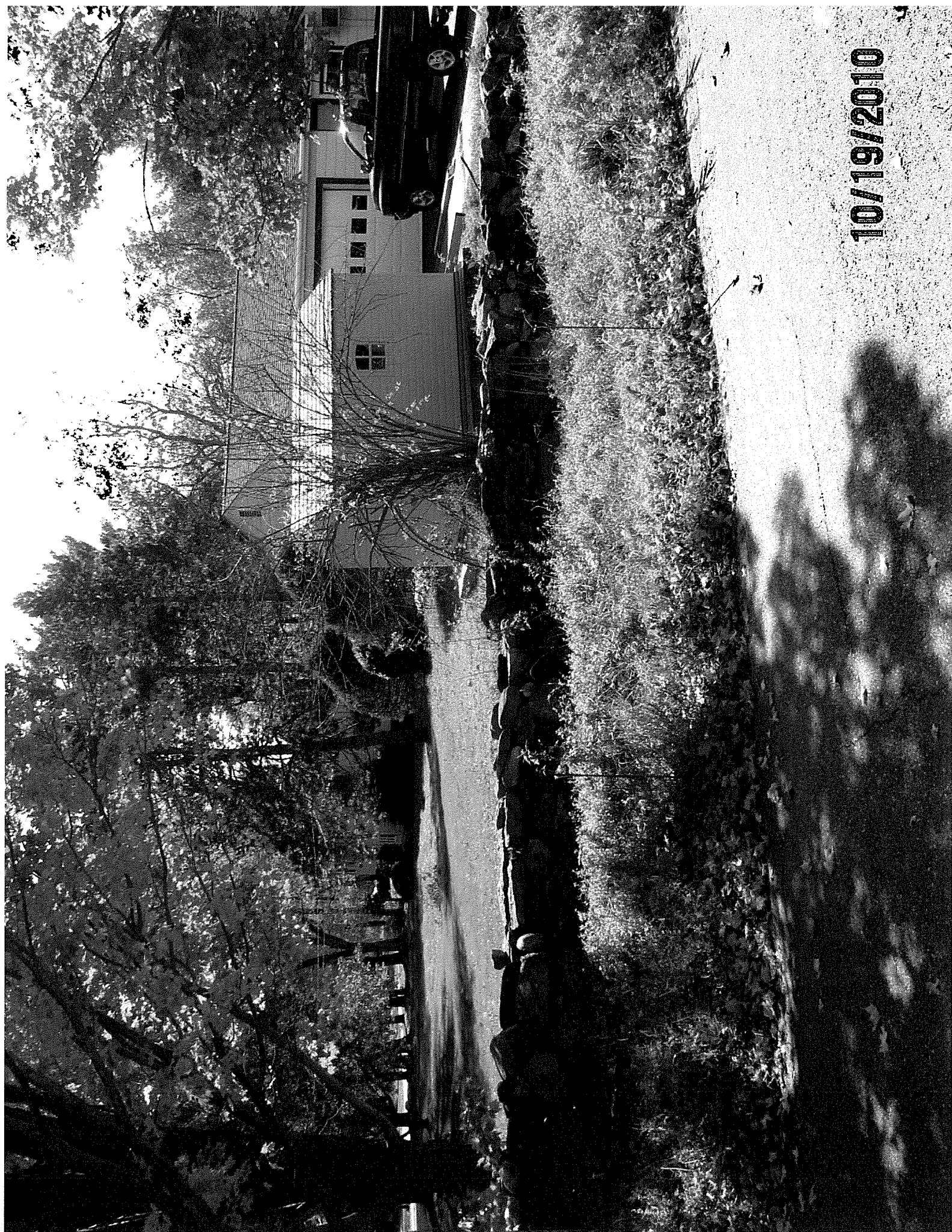




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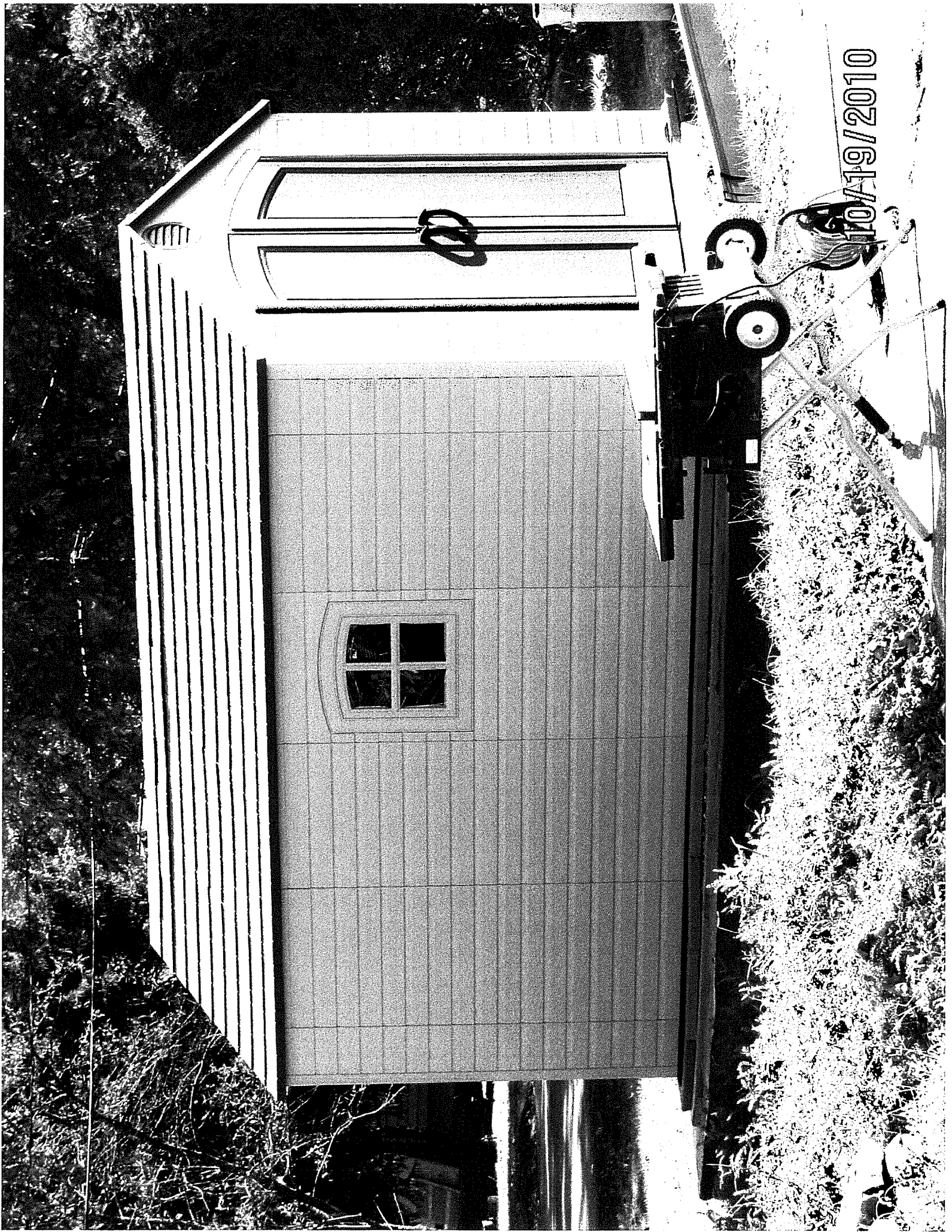
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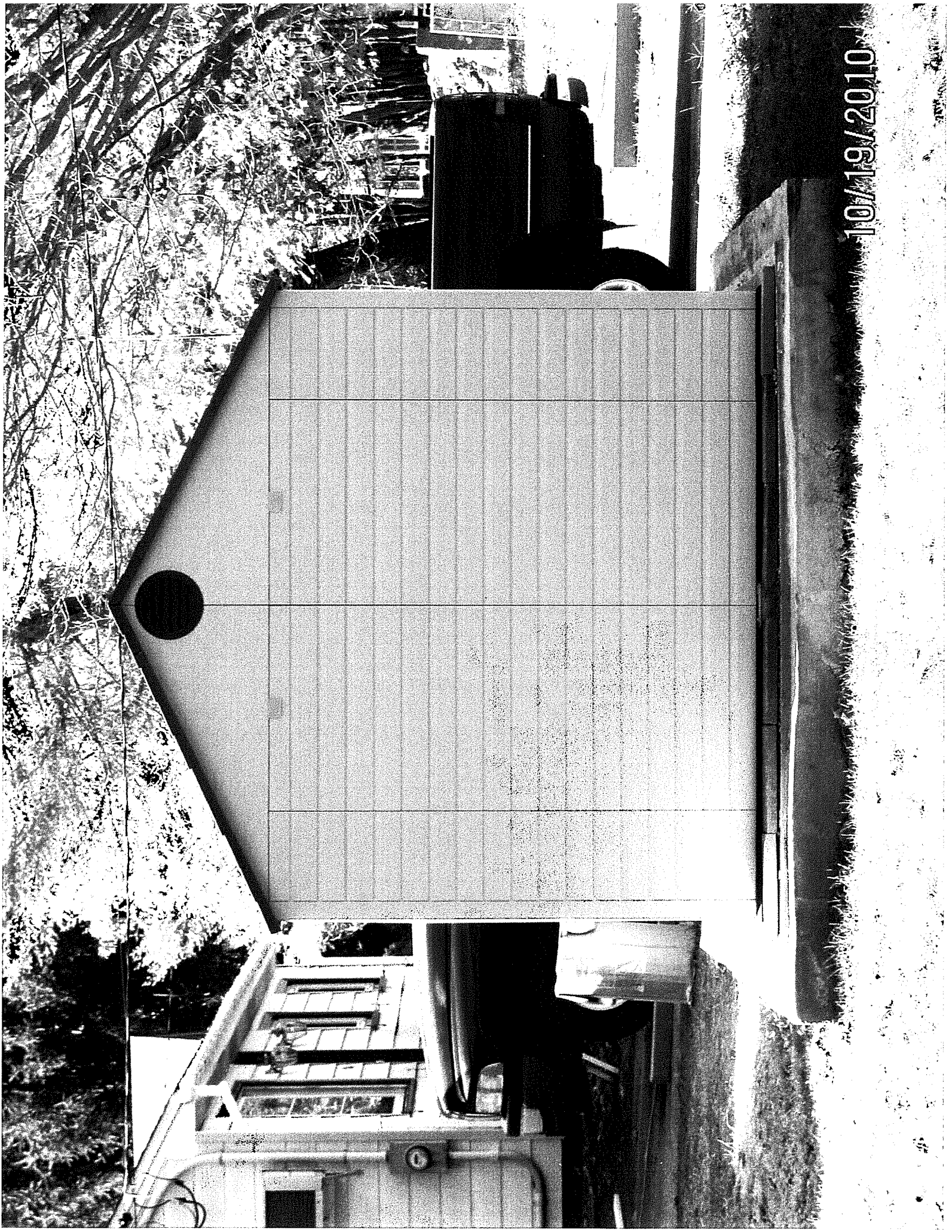


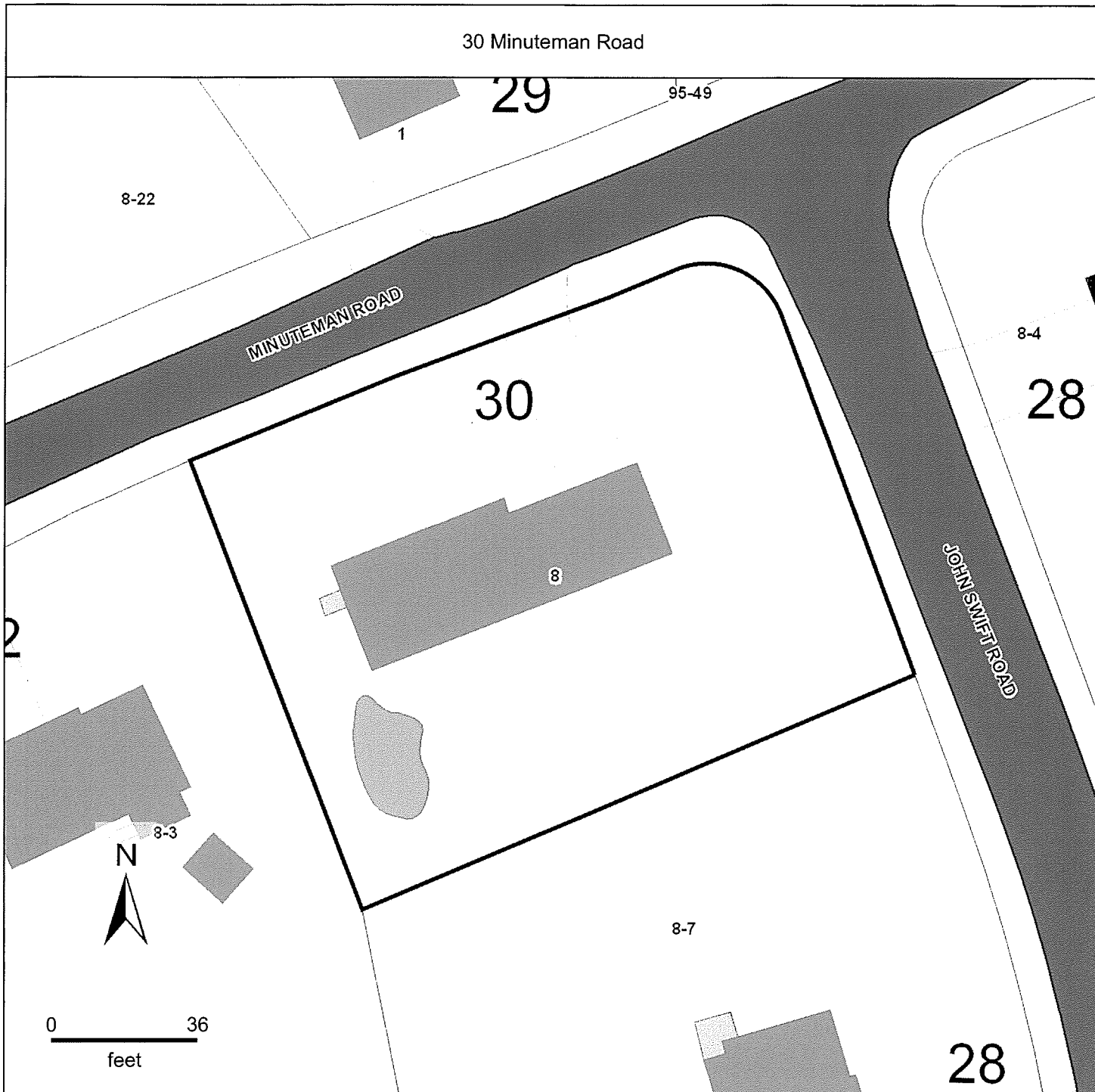
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Property Information

Property ID F3A-8

Location 30 MINUTEMAN RD



**MAP FOR REFERENCE ONLY
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